Supreme Court, U. S.
FILED
SEP 29 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-531

PAULA NEWELL AND CYNTHIA WHITE
Petitioners

VERSUS

ORLEANS PARISH SCHOOL BOARD
Respondent

VICTORIA DIMITRY WILLIAMS

VERSUS

ORLEANS PARISH SCHOOL BOARD
Respondent

PETITION FOR CERTIORARI TO THE LOUISIANA COURT OF APPEAL FOR THE FOURTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO.

PAULA NEWELL AND CYNTHIA WHITE
Petitioners

VERSUS

ORLEANS PARISH SCHOOL BOARD
Respondent

VICTORIA DIMITRY WILLIAMS
Petitioner

VERSUS

ORLEANS PARISH SCHOOL BOARD
Respondent

PETITIONER FOR WRIT OF CERTIORARI TO THE LOUISIANA COURT OF APPEAL FOR THE FOURTH CIRCUIT

The petitioners Marianne Newman, 1/ Cynthia White and Victoria Dimitry Williams pray that a writ of certiorari issue to review the judgments and opinions of the Louisiana Court of Appeal for the Fourth Circuit.

OPINIONS BELOW

The opinion of the Louisiana Court of Appeal in the Newell and White case is reported at 370 So 2d 655 and is reprinted in the Appendix at pp. 18 - 24 infra. The opinion of the Court of Appeal in the Williams case is reported at 370 So 2d 658 (A. 25 - 27). The Supreme Court of Louisiana denied review at 373 So 2d 531 (A. 30).

JURISDICTION

The judgment of the Court of Appeal was rendered in both matters on April 10, 1979. Thereafter, timely petitions for rehearing were denied on May 17, 1979. The Supreme Court of Louisiana declined review on July 2, 1979. Jurisdiction of this Court is invoked pursuant to 28 USC § 1257.

QUESTIONS PRESENTED

1. Where Louisiana statute provided that public school teachers became eligible for sabbatical leave of one semester following completion of six consecutive semesters of active duty teaching and leave of two semesters following completion of twelve consecutive semesters of active duty teaching, did petitioners, three female teachers, forfeit their eligibility for sabbatical by taking maternity leave after completing the requisite number of active duty consecutive semesters but before applying for their sabbatical leaves?

2. Does forfeiture of eligibility for sabbatical leave by reason of intervening pregnancy of teachers, who had taught the required number of semesters to be eligible for sabbatical, constitute a denial of due process and/or equal protection under the Fourteenth Amendment to the United States Constitution?

3. Does denial of sabbatical leave under the circumstances of this case serve any valid state interest that justifies the burden that such denial places upon the teachers' exercise of their fundamental right to bear children?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. The Fourteenth Amendment to the Constitution of the United States provides in pertinent part that:

> . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

B. *La. Rev. Stat.* § 17:1171 provided that: 2/

> Members of the teaching staff of public schools in all

1/ Marianne Newman joined as a plaintiff after suit was filed. Paula Newell resigned from the school system and has since withdrawn from the case.

2/ In 1978 the statute was amended to provide for situations involving maternity leave. This amendment is discussed *infra* at p.

parishes and municipalities of the State of Louisiana shall be eligible for sabbatical leaves, for the purpose of professional or cultural improvement, or for the purpose of rest and recuperation, for the two semesters immediately following any twelve or more consecutive semesters of active service in the parish where the teacher is employed, or for the one semester immediately following any six or more consecutive semesters of service.

Absence on sick leave under Sub-part B of this Part shall not deem to interrupt the active service herein provided for.

STATEMENT OF THE CASE

Plaintiffs are three female public school teachers in New Orleans, Louisiana. They brought these two consolidated cases against their employer, the Orleans Parish School Board, after the Board denied their applications for sabbatical leaves during the 1977-78 school year.

Plaintiff Cynthia White was employed by the Board in September, 1973, and thereafter taught for six consecutive semesters until May, 1976. During the summer of 1976, she applied for an received a maternity leave for the 1976-77 school year. In the spring of 1977, while still on maternity leave, she applied for sabbatical leave of one semester to be taken in the fall of 1977, based upon the six consecutive semesters she had taught prior to her maternity leave. Her request was denied. 3/

Plaintiff Marianne Newman has been employed as a teacher since the fall of 1966. She taught for thirteen consecutive

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3/ A. 19 and *cf. La. Rev. Stat.* Sections 17:1171, supra p. 3.

semesters between January 1971 and May 1977. During the summer of 1977, she applied for and received a maternity leave of absence which was to expire at the end of the fall semester, 1977. During the fall of 1977, she applied for sabbatical leave based upon the thirteen consecutive semesters she had taught prior to having her baby. Her application was denied. 4/

Plaintiff Victoria Williams taught for twelve consecutive semesters between August, 1970 and May, 1976. She took maternity leave from August, 1976, through April, 1977. She applied for sabbatical leave for the 1977-78 school year based upon the twelve consecutive semesters she had taught prior to going on maternity leave. Her request was denied. 5/

In each case the sabbatical was denied on the grounds that the intervening maternity leave had defeated the teacher's eligibility.

The two suits were filed in the fall of 1977, seeking injunctive and mandatory relief whereby the Board would be ordered to grant the sabbatical leaves. The Board appealed suspensively 6/ from judgments favorable to plaintiffs in both trial courts.

On appeal, the matters were consolidated for oral argument. 7/ In April, 1979, the court of appeal reversed both lower courts. Thereafter a timely application for rehearing was

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4/ A. 19, Ms. Newman's maternity leave was thereafter extended through May, 1978.

5/ A. 26.

6/ In Louisiana, a "suspensive" appeal stays the execution of the judgment.

7/ A. 15.

denied and the Supreme Court of Louisiana declined review 8/

REASONS FOR GRANTING THE WRIT

The Decision Below Conflict With This Court's Decision

In *Cleveland Board of Education v La. Fleur*, 414 US 632.

In *Cleveland Board of Education v. La Fleur*, 9/ and its companion case, 10/ the Court considered the constitutionality of School Board policies regarding maternity leaves of absence. At issue were provisions of the respective School Boards' policies regarding commencement of maternity leave and return to work following childbirth. 11/ The Court invalidated parts of the Cleveland and the Chesterfield County Virginia policies which in the opinion of the Court unreasonably burdened the teachers' exercise of their fundamental right to bear children. 12/

The Court addressed the question of whether the valid state interests in promoting continuity of instruction and in assuring that physically capable teachers were in the classrooms at all times justified the restriction placed upon the exercise by the teacher of her right:

8/ A. 30.

9/ 414 U.S. 632.

10/ *Cohn v. Chesterfield County School Board*,

11/ Id. at 634 - 638.

12/ Id. at 639.

> "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision to bear or beget a child." 13/

The instant case present a similar question in terms of the effect of pregnancy upon sabbatical leave rights granted to the teacher by statute.

By statute 14/ the State of Louisiana provides that teachers in the public schools shall be eligible for sabbatical leave for the two semesters immediately following any twelve or more consecutive semesters of active service and for the one semester immediately following any six or more consecutive semesters of service. 15/

Sabbatical leave is granted for the purpose of professional and cultural improvement or for the purpose of rest and recuperation.

Teachers on sabbatical leave are paid based upon a formula set forth elsewhere in the statute. 16/

Teachers are required to meet certain educational or pro-

13/ *id.*; quoting from *Eisenstadt v Baird*, 405 U.S. 438.

14/ *La. Rev. Stat.* Section 17:1171, *supra* p. 3

15/ *Id.*

16/ *La. Rev. Stat.* Section 17:1184. The teacher may elect to receive 50 % of the minimum salary allowed a beginning teacher or the difference between the teachers' actual salary and the amount paid a substitute teacher whichever is greater.

fessional criteria during the leave, 17/ and to submit reports on the manner in which the leave is spent. 18/

Petitioners had each taught the requisite numbers of consecutive semesters to be eligible for two semesters of leave in the case of plaintiffs Newman and Williams, and for one semester of leave in the case of plaintiff White. However, in the semester immediately following their attainment of eligibility these three teachers took maternity leave because they were pregnant.

All three teachers thereupon timely applied for sabbatical leave during the school year next following their absence on maternity leave. This was denied by the school board on the gounds that departure on maternity leave had interrupted their eligibility and that they would have to start over and teach for another six or twelve consecutive semesters before becoming eligible again. The statute, according to the board, specifically referred to the leave taking place in the semester(s) "immediately following" completion of the required active service.

The statute provided that absence on sick leave would not interrupt the active service requirement as a pre-condition to obtaining eligibility, and it has since been amended to provide that absence on maternity leave for the period of actual disability will not interrupt the active service requirement, 19/

Nevertheless, eligibility once acquired is forfeited if the leave is not applied for and taken during the "immediately

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17/ *La. Rev. Stat.* Section 17:1177.

18/ *La. Rev. Stat.* Section 17:1178.

19/ *La. Acts:* 1978, No. 385.

following" semester. It is this aspect of the statute as written and as applied to petitioners which is challenged in this case. Petitioners submit that it is the *loss* of their eligibility for sabbatical by reason of an intervening pregnancy which places an unreasonable burden upon their exercise of their fundamental rights while serving no valid state interest.

Petitioners further submit that the statute as written and as applied to them denies them equal protection because it accords them as pregnant teachers different treatment which is not based upon" . . . some reasonable differentiation fairly related to the object of the . . . (statute) . . . 20/

Petitioners are not alleging invidious sexual discrimination. The fact that all pregnant teachers happen to be female does not of itself, as this Court has held, require the application of strict scrutiny and the discernment or compelling state interests. 21/ The statute in question as applied to petitioners accords unfavorable treatment to them for no reason other than their pregnancy during the semester immediately following their attainment of eligibility.

By contrast, because of the language of the statutes as it then read regarding sick leave, a teacher male or female who goes on sick leave after acquiring eligibility would remain eligible for sabbatical following for the entire period of his sick leave and would be permitted to go on sabbatical following expiration of the sick leave.

In this case, we are dealing with teachers who *completed*

20/ *Cf. Railway Express Agency v New York*, 336 U.S. 106 (Justice Jackson concurring at 126.

21/ *Cf. Geduldig v Aiello*, 417 U.S. 484; *General Electric Co., v Gilbert*, 429 U.S. 125.

their periods of active service and who merely seek to preserve their eligibility during the period of their respective maternity leaves.

The Court of Appeal consistently took the position that petitioners were seeking a judgment to the effect either that absence on maternity leave did not *interrupt* the active service requirement, 22/ or that a teacher should be able to count maternity leave time towards active service. 23/

This is definitely *not* the position espoused by petitioners.

The petitioners submit that the statute provides a right to take sabbatical leave upon the completion of either six or twelve *consecutive semesters of active service*. Petitioners taught for the required number of consecutive semesters without *any* interruption. They then became eligible for sabbatical. It was at that point that pregnancy intervened and they took maternity leaves. They applied for sabbaticals when they returned, only to learn that they were no longer eligible. They had defeated their eligibility by taking a maternity leave.

The right to take a sabbatical is granted by statute to all teachers who complete the requisite number of consecutive semesters. The strict construction of the "immediately following" language as applied to petitioners frustrates rather than promotes the legislative intent of providing opportunities for

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22/ A. 20." The legislative intent was clear that active service time required for sabbatical eligibility could not include maternity leave.

23/ A. 22." If we were to interpret the law as plaintiffs suggest, it would be possible for a teacher with three pregnancies and safe deliveries within a three year period to acquire sabbatical leave without *any* active teaching time." (emphasis added.)

cultural and professional improvement to teachers who have served an active duty for the required number of semesters.

Such a construction operates only to deny the opportunity for sabbatical to teachers otherwise eligible for the reason that they became pregnant before they had the opportunity to take their sabbaticals.

Such a construction serves to prevent the teacher from taking a sabbatical leave for lawful and recognized purposes merely because she took a maternity leave.

The Louisiana legislature decided in 1978 that absence on maternity leave for the period of actual disability would not interrupt the accrual of consecutive semesters toward eligibility for sabbatical leaves. By limiting it to the "period of disability occasioned by pregnancy and/or childbirth," 24/ the legislature answered the question of whether absence on maternity leave *beyond* the period of actual disability would interrupt the active service requirement. The legislature decided that for future cases, absence on maternity leave beyond the period of actual disability would so interrupt the period of active service.

But that is *not* the question here. The situation in this case does not involve the *accrual* of eligibility, but rather the *maintenance* of eligibility once accrued.

As the lower court found, petitioners' maternity leaves exceeded the "mandated" 10 week period (4weeks prior to and 6 weeks following childbirth) which the school board at that time did not deem to be interruptive of active services toward the accrual of sabbatical eligibility; but no findings

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24/ *La. Rev. Stat.* Section 17:1171 (as amended 1978).

were made as to the period of their actual disability. This application of a presumption of disability over a specified period of time in itself offends the holding of *La Fleur*.

Under school board policy, a teacher is permitted to take a maternity leave of up to two years duration. Prior to the 1977-78 school year, such leaves, even for the maximum two-year period, were not deemed to interrupt the accrual of sabbatical eligibility time, as the court of appeal noted in its opinion on rehearing. 25/

However, the court of appeal was incorrect in concluding that petitioners had not relied upon this past practice to their detriment. When petitioners applied for their maternity leaves, they had already achieved their eligibility for sabbatical. Further, if under past practice such a maternity leave would not interrupt sabbatical eligibility if taken during the twelve semester period, then neither should such a leave defeat eligibility once obtained.

25/A. 29.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Louisiana Court of Appeal for the Fourth Circuit.

Respectfully Submitted

JOHN P. NELSON, JR.
LARRY SAMUEL
RICHARD G. VINET
144 Elk Place Suite 1202
New Orleans, La. 70112

RICHARD G. VINET

CERTIFICATE

I hereby certify that I have on this the 28th day of September 1979 served three copies of the foregoing petition upon Franklin V. Endom, Jr. Attorney for respondent and that all parties required to be served have been served.

RICHARD G. VINET

APPENDIX

COURT OF APPEAL
FOURTH CIRCUIT - STATE OF LOUISIANA

NO. 10,000

PAULA NEWELL and CYNTHIA WHITE
Plaintiff-Appellee

VERSUS

ORLEANS PARISH SCHOOL BOARD
Defendant-Appellant

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

NO. 77-16442 DIVISION "H"

HONORABLE OLIVER P. CARRIERE, JUDGE

MOTION TO CONSOLIDATE

On motion of Orleans Parish School Board, defendant-appellant in the above numbered and entitled appeal, through its undersigned counsel, and on suggesting to the Court that there is presently pending on appeal before this Court the matter entitled, "Victoria Dimitry Williams, Plaintiff-Appellee versus Orleans Parish School Board, Defendant-Appellant," bearing the number 10,108, on the Docket of this Court; and,

On further suggesting to the Court that the issues raised in both appeals are similar to the extent that both appeals involve, among other things, the question of whether or not prior maternity leaves of absence interrupt eligibility for teachers' sabbatical leaves of absence; and,

On further suggesting to the Court that the appeals in these cases would be more expeditiously handled through consolidation of said appeals for the purpose of presenting oral argument to this Court; and,

On further suggesting to the Court that counsel for plaintiffs in both appeals has no objection to the consolidation of these cases.

ORDER

Considering the foregoing Motion,

IT IS ORDERED that the appeal in "Victoria Dimitry Williams, Plaintiff-Appellee versus Orleans Parish School Board, Defendant-Appellant," number 10,108 on the Docket of this Court, be and the same is hereby consolidated with the above numbered and entitled appeal for the purpose of presenting oral argument.

New Orleans, Louisiana, this 4th day of December, 1978.

/S/ L. JULIAN SAMMUEL
JUDGE

Respectfully submitted,

POLACK, ROSENBERG,
RITTENBERG & ENDOM

BY:_____

FRANKLIN V. ENDOM, JR.

Attorneys for Orleans Parish
School Board, Defendant-
Appellant
1006 Hibernia Bank Building
New Orleans, La. 70112
581-1422

CERTIFICATE

I certify that I have forwarded a copy of the foregoing Motion and Order to plaintiff-appellees' counsel of record, Lary Samuel, Esq., by depositing same in the United States Mails, postage prepaid and addressed to his office at Suit 1202, 144 Elk Place, New Orleans, Louisiana, this 4th day of December, 1978.

/S/ FRANKLIN V. ENDOM, JR.
FRANKLIN V. ENDOM, JR.

A TRUE COPY
NEW ORLEANS DEC. 4 1978 19___

/S/ Illegible
Court of Appeal Fourth Circuit

PAULA NEWELL AND CYNTHIA WHITE

V

ORLEANS PARISH SCHOOL BOARD

No. 10,000 - Consolidated with No. 10,108

COURT OF APPEAL FOURTH CIRCUIT
STATE OF LOUISIANA

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS DIVISION "H", NO. 77-16442, HONORABLE OLIVER P. CARRIERE, JUDGE

EDWARD J. STOULIG
JUDGE

APRIL 10, 1979

LEMMON, J., CONCURS WITH WRITTEN REASONS

(Court composed of Judges Harry T. Lemmon, James C. Gulotta, and Edward J. Stoulig)

NELSON, NELSON & LOMBARD
JOHN P. NELSON, JR.
LARRY SAMUEL
for Plaintiffs-appellees.

POLACK, ROSENBERG, RITTENBERG & ENDOM
FRANKLIN V. ENDOM, JR.
for defendant-appellant.

REVERSED:
WRIT OF MANDAMUS VACATED.

The Orleans Parish School Board has appealed a judgment which by writ of mandamus directs it to grant sabbatical leave to appellees, 1/ Cynthia White and Marianne Newman.

To qualify for a one-semester sabbatical leave the applicant must have six consecutive semesters of active service immediately before a leave may be granted or twelve consecutive active semesters before a two-semester sabbatical leave may be granted. (R.S. 17:1171) In this case appellees would have been eligible for sabbatical leave had the Board credited their maternity leaves as active service time. The issue then is whether maternity leave interrupts active service insofar as sabbatical eligibility is concerned.

Plaintiff Cynthia White taught from September 1973 through May 1976, or six consecutive semesters. She applied for and was granted maternity leave during the 1976-77 school year, and in the spring of 1977, while on maternity leave, she requested sabbatical leave for the fall 1977 semester. Appellant denied her request. Similarly, Marianne Newman taught from January 1971 through May 1977, or 13 consecutive semesters. In fall 1977 she was out on maternity leave. Her application for sabbatical leave for the spring 1978 semester was denied. Hence this suit for mandamus.

R. S. 17 regulates public education in Louisiana and Chapter

1/ By amendment and supplemental petition Marianne Newman was made an additional party plaintiff. Paula Newell, the third appellee, retired from the Orleans system and voluntarily moved to vacate the favorable judgment she obtained.

2, entitled "Teachers and Employees," contains, among other things, a section on "Leaves of Absence" designated as Part X. We summarize the law in effect at the time the plaintiffs' leaves were applied for and denied. Sub-part A defined the sabbatical leave and the active service requirements for eligibility in R.S. 17:1171. The last paragraph of that statute created two exceptions to the active service requirement specifying that documented sick leave and involuntary military service would not be deemed to be interruptions of active service even though the teacher was not continuously in the classroom while his or her eligibility for sabbatical leave was accruing. The exceptions created in 17:1171 expressly referred to the statutes that dealt with them, i. e., the sick leave provision was limited to Part X, Sub-part B and the military leave was restricted to R.S. 17:1215. Obviously the latter had nothing to do with maternity leave. Nor could we class maternity leave as sick leave under Sub-part B because Sub-part C expressly regulated maternity leave.

R.S. 17:1211, Sub-part C mandated that boards "* * * shall grant leaves of absence to regularly employed women teachers for a reasonable time before and after childbirth," and stated the granting of such leaves ***should not affect tenure rights*** acquired prior to the leave under R.S. 17:441 through 17:444 or 17:461 through 17:463. (These sections relate to job security once the teacher has completed the three-year probationary period.) The legislative intent was clear that active service time required for sabbatical eligibility under 17:1171 could not include maternity leave. In this connection we note the Board did not consider that segment of maternity leave medically required for childbearing as an interruption of active service.

The Orleans Parish School Board had adopted a policy in administering the sabbatical eligibility laws that obviates a constitutional problem. It required a pregnant teacher to leave

her teaching position at least four weeks before delivery and permitted her to resume her teaching duties six weeks after the birth of her child. Her absence during this period was not treated as an interruption of active service. Thus, for the childbearing period- -the time before and after delivery that the Board was informed was required medically for childbirth - -the teacher's status was maintained as active. Had this not been the rule the constitutional challenge urged by appellees would have merit.

The teacher who voluntarily elected to remain with her infant child once the six-week post-delivery period expired then was deemed to have interrupted her active service. The logic of continuing the teacher on active status during the minimum 10-week childbearing period is inescapable because at this point in time it is medically unsound for her to be in the classroom.

Appellees charge our holding is unconstitutional in that it abridges due process and equal protection guarantees afforded plaintiffs by the state and federal constitutions. Without developing argument in which respects both guarantees are violated, plaintiffs basically take an equal protection approach and argue the failure to credit maternity leave as active service is sex discrimination. La. Const. of 1974 Art. 1, § § 2 and 3, and Amendment 14 of the United States Constitution provide, inter alia, that all persons, regardless of sex, are entitled to equal protection (and administration) of law.

The equal protection argument fails in the light of the holding in General Elec. Co. v. Gilbert, 429 U. S. 125, 97 S. Ct. 401, 50 LEd. 2d 343 (1976), and the jurisprudence it discusses and distinguishes. Were the distinctions involving pregnancy mere pretexts designed to effect an invidious discrimination against members of the female sex, the Court pointed out, then the laws so regulating rights of childbearing women would be a denial of equal protection. However, it

was noted that the mere fact that only women can become pregnant does not render every legislative act regulating pregnant does not render every legislative act regulating pregnancy a gender-based discrimination.

The sabbatical leave laws, as administered by the Board, permitted these women teachers who elected to have children the right to maintain active service status during the child-bearing period. 2/ The failure to extend active status to the elective (not medically required) child-caring period created no abridgement of the equal protection guarantees constitutionally afforded plaintiffs. Nor do we consider the laws as administered to constitute a denial of property without due process of law.

If we were to interpret the law as plaintiffs suggest, it would be possible for a teacher with three pregnancies and safe deliveries within a three-year period to acquire sabbatical leave without any active teaching time. As R.S. 17:1171 indicates, sabbatical leave is for the purposes of either continuing education or rest and recuperation. It is not a vacation period that accrues after so many years of service.

For the reasons assigned, the judgment appealed from is reversed and the writ of mandamus ordering the Orleans Parish

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2/ Apparantly acting to eliminate the inequity of the interruption of continuous service compelled by pregnancy and childbirth and to avoid the constitutional prohibition against gender-based discrimination, the legislature adopted Act No. 385 of 1978 amending R.S. 17:1171 to provide that "* * * the period of disability occasioned by pregnancy and/or childbirth as determined by a certificate from the employee's attending physician, shall not be deemed to interrupt the active service herein provided for * * *." The amendment conforms with the policy of the Orleans Parish School Board in effect prior to the adoption of this amendment.

School Board to grant sabbatical leaves to Cynthia White and Marianne Newman is hereby vacated. Plaintiffs are to pay all costs of this litigation.

REVERSED;
WRIT OF MANDAMUS VACATED.

PAULA NEWELL AND CYNTHIA WHITE *

VS.

ORLEANS PARISH SCHOOL BOARD

NO. 10,000

LEMMON, J., CONCURS AND ASSIGNS REASONS

R.S. 17:1211 requires school boards to grant leaves of absence to teachers for the purpose of bearing a child, but only for "a reasonable time before and after childbirth".

If this case involved teachers who had taken authorized maternity leaves *for a reasonable time before and after childbirth*, I would vote that the active service required by R.S. 17:1171 (even before the 1978 act) had not been interrupted. However, these teachers (insofar as this record shows) went far beyond the reasonable time for a maternity leave as authorized by R.S. 17:1211, and their active service time required for sabbatical leave was interrupted.

VICTORIA DIMITRY WILLIAMS

V.

ORLEANS PARISH SCHOOL BOARD

NO. 10,108 - Consolidated with No. 10,000

COURT OF APPEAL FOURTH CIRCUIT
STATE OF LOUISIANA

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS DIVISION "B", NO. 77-12806, HONORABLE ADRIAN DUPLANTIER, JUDGE

EDWARD J. STOULIG
JUDGE

APRIL 10, 1979

LEMMON, J., CONCURS FOR REASONS ASSIGNED IN NO. 10,000.

(Court composed of Judges Harry T. Lemmon, James C. Gulotta and Edward J. Stoulig)

NELSON, NELSON & LOMBARD
JOHN P. NELSON, JR.
for Plaintiff-appellee.

POLACK, ROSENBERG, RITTENBERG & ENDOM
FRANKLIN V. ENDOM, JR.
for defendant-appellant.

REVERSED;
INJUNCTION DISSOLVED.

The Orleans Parish School Board has appealed a judgment in which the court issued a preliminary injunction 1/ "* * * directing defendant Orleans Parish School Board to grant the sabbatical leave for the 1977-78 school year applied for by petitioner Victoria Dimitry Williams."

Plaintiff, an Orleans Parish School Board teacher since August 31, 1970, served continuously in that position until she took maternity leave from August 23, 1976 through April 25, 1977. She was on the payroll for the month of May 1977 as an active teacher. Her request for sabbatical leave for the 1977-78 school year was denied.

For the reasons assigned in Case No. 10,000 entitled "Paula Newell and Cynthia White v. Orleans Parish School Board," consolidated with this case on appeal, the judgment of the trial court is reversed and the injunction is dissolved. Plaintiff is to pay all costs.

REVERSED;
INJUNCTION DISSOLVED.

1/ In view of the result we reach we make no comment on the procedure.

VICTORIA DIMITRY WILLIAMS *

VS.

ORLEANS PARISH SCHOOL BOARD

NO. 10,108

I concur for the reasons assigned in No. 10,000, Paula Newell and Cynthia White v. Orleans Parish School Board.

PAULA NEWELL AND CYNTHIA WHITE

V.

ORLEANS PARISH SCHOOL BOARD

No. 10,000 · Consolidated with No. 10,108

COURT OF APPEAL FOURTH CIRCUIT
STATE OF LOUISIANA

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS DIVISION "H", 77-16442,
HONORABLE OLIVER P. CARRIERE, JUDGE

PER CURIAM
(Court composed of Judges Harry T. Lemmon,
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for defendant-appellant.

On application for rehearing plaintiffs argue the effect of the School Board's past practice of considering all maternity leaves as non-interruptive of the period of active service required for eligibility for sabbatical leave. However, this record contains no evidence that plaintiffs relied to their detriment on any past practices of the School Board.

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

VICTORIA DIMITRY WILLIAMS

VS.

ORLEANS PARISH SCHOOL BOARD

CONSOLIDATED WITH:

PAULA NEWELL AND CYNTHIA WHITE

VS.

ORLEANS PARISH SCHOOL BOARD

JULY 2, 1979

NO. 64,907

IN RE: Paula Newell, Cynthia White and Victoria Dimitry Williams, applying for Certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Orleans, NOS. 10,000 and 10,108.

Writ denied.

JLD
AT JR
JAD
PFC
WFM
FAB

SUMMERS, C. J., absent

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
July 2, 1979

/S/ ILLEGIBLE
Clerk of Court